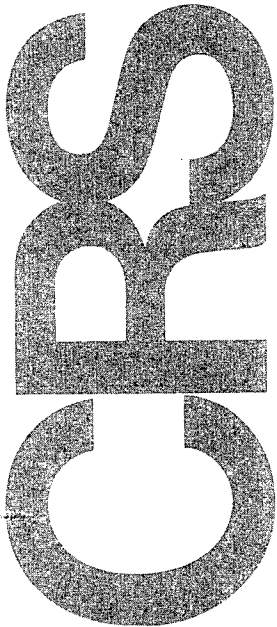


LEGISLATION, APPROPRIATIONS, AND BUDGETS:
THE DEVELOPMENT OF SPENDING DECISION-MAKING IN CONGRESS

Prepared Under Contract for the
Congressional Research Service
by
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Consultant



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ABSTRACT

This report, written under contract for the Congressional Research Service by Allen Schick, a former Senior Specialist in American National Government and Public Administration, provides a history of the development of authorizations, appropriations, and budget processes in the United States Congress, explaining why a triplicate approach evolved, the inter-relationship among the three processes, and where they stand now.

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INTRODUCTION

In 1979, shortly after the Shah of Iran was deposed, President Carter requested funds to acquire several ships that had been ordered by Iran. On April 25, during consideration of a budget resolution, the Senate rejected a floor amendment to delete funds for the ships. Barely a week later, the Senate rejected a floor amendment to cut funds for the ships from a defense authorization bill. Finally, on June 25, the Senate rejected an amendment to cut these funds from an appropriation bill. Thus, the Senate dealt with a single issue three times during the course of two months: in a budget resolution, in an authorization bill, and in an appropriation measure. Although three different legislative instruments were used, on each occasion the issue was defined and decided in financial terms.

This triplication of legislative effort is by no means unusual; indeed, every program that has an annual authorization (as well as new programs and those with expiring authorizations) can be subjected to three legislative decisions in a single session of Congress. The triplication arises out of a fact of legislative life: Congress has three processes for making program and spending decisions. Two of these (appropriation and authorization) are as old as the United States Government; the third (congressional budgeting)

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was introduced in the 1970s. The processes are supposed to have distinct purposes. Authorizations are intended to be instruments for making substantive policy and for enabling Federal agencies to undertake various activities. Appropriations are the means of financing authorized activities. Budget resolutions are supposed to establish national fiscal policy and broad budgetary priorities.

This division of congressional labor is reflected in House and Senate rules which distinguish between legislation and appropriation. Both chambers bar legislation (including authorization) in general appropriation bills; the House goes a step further and proscribes appropriations in bills reported by legislative committees. ^{1/} If the rules mean what they say, there should be a clear and unbridgeable barrier between these processes: what Congress does in the one it cannot do in the other. Similarly, the congressional budget process established in 1974 was to coexist with the two older processes, and not to intrude on their basic jurisdictions. Budgeting was to deal with fiscal aggregates--total revenues and expenditures--and a sum allocated to each budget function. Particular program and expenditure decisions would continue to be made in authorizations and appropriations, not in budget resolutions.

The threefold division of legislative labor has not operated exactly as intended. As the votes on the Iranian ships demonstrate, the boundaries separating the three processes are not so clearly marked as to prevent the same issue from arising again and again. The processes often appear to be redundant rather than differentiated. The repetition of tasks adds significantly to the workloads of committees, Members, the House and Senate, and executive officials. It also invites delay and confusion. Each process has its

^{1/} House Rules XXI, clauses 2 and 5; Senate Rule XVI, clauses 1, 2 and 4.

distinctive way for measuring and reporting the financial aspects of legislative decisions, so that there is widespread bickering over budgetary data. Moreover, financial considerations have become preemptive, crowding out other legislative interests and impelling Congress to define many issues solely in financial terms. Congress seems to work harder to accomplish less, as its machinery is overloaded by the multiplicity of processes. Conflict flourishes because the processes get in each other's way.

This paper examines the reasons for legislative triplication. It surveys the 200 years of congressional history to identify the origins of these processes and to explain how they have changed over time. The paper then narrows its focus to the past dozen years, measures the extent to which financial considerations dominate the congressional agenda, and surveys the boundaries among the processes. The paper concludes with an examination of options for restoring or redrawing the boundaries.

Over the course of two centuries, Congress has been both a constant and changing institution. It passes laws and makes appropriations just as it did when the nation was young. But close examination of these acts reveals that they have undergone significant change. The changes have been analyzed for this report by reviewing the laws enacted over the years. Because it would have been unmanageable to read all of the many thousands of laws passed since 1789, only the laws passed in every 9th year were examined. In addition, congressional actions in the years immediately before and after major rules changes were reviewed.

This review led to the classification of congressional treatment of authorizing legislation and appropriations into five phases. The first of these stretched from 1789 to the late 19th century. It began without any formal rules governing the relationship between appropriations and authorizations and

ended with established rules. The second stage was characterized by a blurring between appropriations and authorizations resulting from the transfer of jurisdiction over many money bills to legislative committees. The third stage was inaugurated by rules changes accompanying the Budget and Accounting Act of 1921. The "modern" form of appropriations and authorizations emerged during this period. The fourth stage developed after World War II, though its antecedents appeared much earlier than that. In this stage, authorizing committees became more directly involved in financial decisions. The final and current stage emanates from the Congressional Budget Act of 1974. Table 1 summarizes the time periods and major developments associated with each stage.

In analyzing these stages, several considerations should be kept in mind. First, the distinction between authorization and appropriation has never been obliterated. Throughout this report, we are dealing with boundary problems; the core of each process has always been identifiable. Second, most of the stages do not have neat beginnings and endings. Many changes occurred gradually and had roots in earlier developments. Third, the terminology used during one period might be different from that used in another. This is most evident with respect to the concept of "authorization." What are now known as authorizations were not known during the 19th century. During that time, what we now call "legislation" had the effect of authorizing appropriations.

TABLE 1. Development of Appropriations, Authorizations, and Budget Processes

Period	Major developments
1. Formative Period, 1789-1865	--Distinction between legislation and appropriation --Distinction between "general" and "special" appropriations

TABLE 1. Development of Appropriations, Authorizations,
and Budget Processes--Continued

Period	Major developments
1. Formative Period, 1789-1865--continued	<ul style="list-style-type: none"> --Unwritten rules against legislation in appropriation bills --Violations of rules by insertion of riders in appropriation bills --Adoption of House and Senate rules against unauthorized appropriations
2. Appropriations Committees Versus Legislative Committees, 1865-1920	<ul style="list-style-type: none"> --Establishment of Appropriations Committees --Adoption of Holman rule in House --Assignment of major appropriation bills to legislative committees --Increased legislation in appropriation bills
3. Consolidation of Appropriations Jurisdiction, 1920-1950	<ul style="list-style-type: none"> --Assignment of all appropriation bills to Appropriations Committees --House rule against appropriations by legislative committees --Emergence of "authorized to be appropriated" provisions in legislation
4. Backdoor Spending and Temporary Authorizations, 1950-1975	<ul style="list-style-type: none"> --Backdoor contract and borrowing authority --Growth of entitlement programs --Use of annual and multi-year authorizations
5. The Budget Phase, 1975-	<ul style="list-style-type: none"> --Establishment of congressional budget process --Increase in budget-related issues --The reconciliation process

THE FORMATIVE YEARS: PRACTICES INTO RULES

To understand how Congress came to have separate appropriation and authorization processes, it is not enough to review the rules of the House and Senate. In his history of legislative development during the early years of American nationhood, Harlow demonstrated that "the rules do not serve as a safe guide. Customs and practices were very frequently established in the House long before they were accorded formal recognition." 2/ The rules adopted during the First Congress did not even mention these types of measures; indeed, the House operated for almost half a century and the Senate for 60 years before incorporating the distinction between legislation and appropriation into their rules.

But though the rules did not address this issue, the First Congress had to provide funds for the conduct of government. The first appropriation act passed in 1789 was as brief as the new Government was small, but it provided some enduring clues as to the content and purpose of appropriations. The act provided

That there be appropriated for the service of the present year . . . the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty seven thousand dollars for defraying the expenses of the department of war; a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids. 3/

2/ Ralph Volney Harlow, *The History of Legislative Methods in the Period Before 1825*, New Haven: Yale University Press, 1917. p. 214.

3/ 1 Stat. 95.

Later appropriation acts were much longer and had many more provisions, but the first such act contained the three generic elements of most appropriation measures. 4/ (1) The appropriations are made for a fixed period of time, usually a single year. They are not made for an indefinite period of time nor is the appropriation act permanent law. (2) The appropriations are for definite sums of money; they are not open-ended as to amount. (3) The act specifies the objects of appropriation. 5/ This measure had only four objects (civil list, department of war, warrants, and pensions) but as the Government expanded and Congress became more independent, the number of objects multiplied. For example, the 1807 appropriation for "the support of government" listed 76 separate objects of expenditure while the 1816 appropriation for this purpose had 136 items. 6/

Even more significant than what was included in the early appropriation acts were the matters excluded from them. None contained legislation authorizing Government agencies or officials to carry out designated activities and none had provisos limiting the uses to which the appropriated funds could be put. The appropriations provided funds for activities already authorized by law; from the outset, Congress had a two-stage legislation-appropriation process with clearly understood distinctions between the two stages. Thus, the First Congress enacted legislation establishing the Department of War and

4/ As explained in the text, throughout this report, the term "appropriation bill" means a "general" appropriation bill in contrast to "special" appropriation.

5/ These "generic" characteristics apply to most--not all--general appropriation bills. Some appropriations are for indefinite periods of time or indefinite amounts.

6/ 2 Stat. 432-36, and 3 Stat. 277-83.

specifying its principal offices and duties before the first appropriation was made to the Department. 7/ If Congress saw a need to limit the authority of agencies or officials, it did so in legislation, not in appropriations. As a consequence, numerous provisos were inserted into legislative measures, but none in appropriations.

The form and content of legislation and appropriations were so different that one would never mistake one type of measure for the other.

--Appropriations were for fixed periods of time, usually a single year; legislation was permanent unless the law limited its period of effectiveness.

--Appropriations were for definite amounts of money; legislation usually did not mention the amounts that could be spent. For example, the act establishing the War Department addressed organizational issues and did not deal with finances.

--The concept of "authorization" was applied to legislation, not to appropriations. One 1798 law authorized the Secretary of State to reimburse consuls serving abroad for certain expenses while another authorized the President to loan money to the City of Washington. 8/ In these (and many other) laws, the phrase "hereby is authorized" was used to spell out the duties and activities of Government agencies or officials, not in the "authorized to be appropriated" sense that emerged in the 20th century. 9/

7/ 1 Stat. 49.

8/ 1 Stat. 551.

9/ In the 19th century, authorizations to appropriate were implied; in the 20th century, they became explicit.

--Because the early appropriations were very detailed, it would have been unnecessary to put limiting provisos into them. Executive use of funds could be limited simply by narrowing the scope of particular objects of expenditure. But inasmuch as legislation was a grant of authority by Congress to executives, it was logical to place the limitation in the same law that granted the authority. The First Congress passed legislation providing that the new National Government would be responsible for maintaining lighthouses that had been built by the States. However, Congress attached a proviso specifying that the U.S. Government's responsibility would terminate if it did not take ownership of the lighthouses within one year. 10/

An examination of the early acts of Congress leads to the conclusion that the distinction between legislation and appropriations was understood and practiced long before it was recognized in the rules. It was deemed improper to put legislation into appropriation measures, though in the absence of rules this sometimes happened. Indeed, the distinction was recognized by the British Parliament and by many colonial legislatures. Almost 100 years before the First Congress met, the House of Lords declared that "the annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to, and different from, the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of the constitution of this

10/ 1 Stat. 53-4.

government." 11/ The Maryland Constitution of 1776 provided that "the House of Delegates shall not, on any occasion, or under any pretense, annex to, or blend with a money bill, any matter, clause, or thing, not immediately relating to . . . the taxes or supplies to be raised for the support of government, or the current expenses of the State." 12/

The distinction between legislation and appropriation was reflected in the designation of the latter as "supply bills" whose sole purpose was to provide funds for the uninterrupted operation of Government. This concept of supply bills was the basis for excluding legislation. Legislation might delay the provision of needed funds. Moreover, because supply bills were necessary for the operation of Government, the inclusion of legislation might lead to the enactment of matters that might not otherwise become law.

The confinement of appropriation bills to matters of supply was reflected in the manner in which they were considered by the House. The bills were taken up in the Committee of the Whole without any amounts specified for the various objects of expenditure. The House then "filled in the blanks" by specifying an amount for each object. 13/ Even after "filling in the blanks" faded away (and appropriation bills were reported to the House with an amount for each item), appropriations continued to be regarded as means of supplying funds to Government agencies and as distinct from legislative measures.

11/ Quoted in Robert Luce, Legislative Problems, Boston: Houghton Mifflin Company, 1935. p. 422.

12/ Ibid., 423.

13/ For a discussion of how the House "filled in the blanks," see Harlow, p. 226.

Although there were no written rules against the insertion of legislation into appropriation bills, Members of Congress usually refrained from doing so. In 1806, for example, the Senate deleted legislation dealing with lands purchased from the Indians from an appropriation bill. "Tis abominable to tack such provisions to an appropriation law," William Plumer complained." ^{14/} When a Representative offered a floor amendment to appropriate for salaries below the levels set in law, several colleagues successfully opposed the proposal on the ground that it would "embarrass the appropriations bill." ^{15/} Yet the unwritten rule against legislation in appropriation bills was breached when Congress found it expedient to do so. Congress often appropriated funds for claims not previously authorized in law and it also appropriated higher amounts for salaries than were provided for in law. These violations were tolerated if they did not delay the enactment of supply bills, were relatively few in number, and did not give one House undue advantage by enabling it to force the other chamber to accept unwanted legislation in appropriations.

General and Special Appropriations

There was one major exception to the division between legislation and appropriation. Congress could legislate in a "special" appropriation bill--that is, a bill in which the appropriation was for a single object. Thus, the 1798 law authorizing the President to lend money to the City of Washington also appropriated funds for the loan. Similarly, the law authorizing the

^{14/} Everett Somerville Brown (ed.) William Plumer's Memorandum of Proceedings in the United States Senate, 1803-1807, New York: The MacMillan Company, 1923. p. 490.

^{15/} See, for example, 1 Cong. Globe, 23d. Cong., 1. Sess.: 304, remarks of Rep. Polk and Rep. Beardsley.

reimbursement of consuls appropriated an amount for this purpose. There were approximately 25 of these "special" appropriation bills in the 1798 session of Congress; throughout the 1800s the special appropriations outnumbered the general appropriations bills.

The distinction between general and special appropriations was so clearly understood that coupling legislation and appropriation into a special bill did not impair the distinction between legislation and appropriation. A general appropriation was so different in purpose and content from a special appropriation that Congress never mistook the one for the other. The differences were evident in the following ways:

--The title of most general appropriation bills specified the year for which the funds were appropriated. Rarely was a general bill effective for more than one year, though some items might be made available for a longer period. A special appropriation usually had no time limit; the funds were available until they were expended for the authorized purpose. Some special appropriations were multi-year. Such was the case in 1816 when Congress appropriated one million dollars per year for 8 years for the construction of warships. 16/

--A single general appropriation bill covered numerous objects of expenditure; a special appropriation bill normally was for a single object, though it occasionally covered a handful of objects. Although special appropriation bills often combined legislation with the appropriation, some special bills provided funds for objects authorized in other laws.

--General appropriations were for the continuing operations of Government. They typically provided funds for the salaries and expenses of Government agencies. Special appropriations were for non-recurring expenses such as construction projects, the payment of claims, and emergencies. This distinction between the two types of measures was the basis for permitting legislation in special bills but not in general appropriations. If a special appropriation was delayed because of legislation contained in it, the operations of Government would not be adversely affected. 17/

--The distinction between general and special appropriations was reflected in congressional procedure. The House Ways and Means and the Senate Finance Committees reported general appropriation bills; 18/ legislative committees often reported special appropriations concerning matters in their jurisdiction. Moreover, all general appropriation bills originated in the House, though many special appropriations originated in the Senate. 19/

17/ This line of reasoning would lead to the classification of continuing appropriations as general appropriation bills. This is the Senate's practice, but not the House's.

18/ The House established the Committee on Ways and Means as a standing committee in 1802; the Senate made the Committee on Finance a standing committee in 1816. Prior to these times, the House and Senate usually used select committees to prepare the appropriation bills. Ways and Means and Finance retained jurisdiction over special appropriations until 1865 and 1867 when the House and Senate Appropriations Committees were respectively established.

19/ "This disability on the part of the Senate [to initiate appropriations] has been held to extend to other than the general appropriation bill, and the Senate is continually originating bills for pensions, claims, public buildings, and other minor matters." Luce, p. 411.

Legislation in Appropriation Bills

If the distinction between legislation and appropriations predated the U.S. Congress, so too did attaching legislative riders to appropriation bills. The protest from the House of Lords and the provision in the Maryland Constitution were reactions to the placement of riders in appropriations. Nevertheless, a review of the laws enacted during Congress' first two decades yields few instances in which substantive legislation was inserted into appropriation bills.

Legislative riders and provisos appeared more frequently during the 1820s, and in the 1830s they became even more common. "Boilerplate" limitations became popular, such as an 1825 proviso that has a contemporary ring: ". . . no money appropriated by this act shall be paid to any person for his compensation, who is in arrears to the United States, until such person shall have accounted for, and paid into the treasury, all sums for which he may be liable." ^{20/} These limitations were grounded on the principle that the power to appropriate inherently included the power to refuse to appropriate or to place conditions on the grant of money. During the formative period there was thus a clear-cut distinction between "limitations" and "legislation." The latter created new law; the former did not make law but merely restricted the use of funds. Legislation was barred in appropriation bills; limitations were not. Nevertheless, Congress sometimes legislated in appropriation acts. One 1834 appropriation legislated the compensation of customs officers and other

^{20/} 4 Stat. 83 (military service appropriation); 4 Stat. 84 (naval appropriation); and 4 Stat. 91 (appropriation for support of government).

personnel; another made regulations issued by the City of Washington applicable to Federal buildings located in the City. 21/

We can surmise that increased legislation in appropriations was related to the growth of the National Government. As the Government expanded, agencies sometimes undertook activities and hired personnel without express authorization in law, and Congress provided for (or limited) agencies' authority when it appropriated funds for their operations and expenses. (One must bear in mind that during most of the 19th century, legislation was extremely detailed, with Congress establishing each position salary and activity.) But whatever the initial reasons for legislating in appropriations, this practice acquired its own momentum. Legislation in appropriation bills begat more legislation in appropriation bills. Once their self-imposed restraint on combining legislation and appropriation had weakened, the House and Senate resorted to the practice whenever they deemed it convenient to do so. What was first done in response to a special circumstance quickly became a precedent for more routine use. Members and committees recognized the advantages that accrued from attaching legislation to "must" appropriations. Yet despite the increased use of riders, the essential difference between legislative and appropriation measures continued to be recognized. Legislation in appropriations still was the exception. 22/

But the exceptions made the rules. Once legislation started to impede the passage of appropriation bills, the House and Senate could no longer rely on the unwritten understandings that had served them for so long. Several

21/ 4 Stat. 698ff (appropriation for civil and diplomatic expenses); and 4 Stat. 723 (appropriation for public buildings).

22/ Luce reports that until 1875, there were only 387 riders enacted in appropriation acts. He does not provide a source for the data, nor does he precisely define what is meant by riders. See Luce, p. 427.

appropriation bills failed of passage in the mid-1830s because of conflict generated by the attachment of riders to them, and these impasses led the House to adopt a rule in 1837 governing unauthorized appropriations: "No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law." It almost immediately developed that in some instances the new rule would impede rather than facilitate the uninterrupted operation of Government; hence, in 1838, the new rule was amended to permit unauthorized appropriations "for such public works and objects as are already in progress and for the contingencies for carrying on the several departments of the government."

The new rule broke no new ground in congressional procedure. It merely reflected the prevailing consensus that, despite numerous breaches, legislation should be separate from appropriation. Moreover, the new rule reflected the established distinction between general appropriations and other measures making appropriations; hence, there was no need to define general appropriations.

The effect of the new rule was immediate but not profound. In 1842, Congress passed a lengthy and detailed law entitled, "An act legalizing and making appropriations for such necessary objects as have been usually included in the general appropriation bills without authority of law. . . ." The act authorized specific positions and salaries for many Federal employees and contained numerous legislative provisions. Interestingly, the act responded to the new rule against unauthorized appropriations by legislating and appropriating in a single measure. 23/

23/ The first five pages of this act contained legislation; the remainder made appropriations. 5 Stat. 523.

Congress legislated in appropriation bills throughout the 1840s. A key reason for this was that the bar against riders applied only to the House. Because it did not have a comparable restraint, the Senate gained a significant advantage in dealing with the House. By adding riders, the Senate could force the House to accept appropriation bills on its terms, especially when (as often happened) the appropriations were considered late in the session. 24/ This tactical advantage was strengthened by the Senate's lack of a general germaneness rule. Although the Senate usually abided by the distinction between legislation and appropriation, it could attach nongermane matters to appropriations.

This great latitude became a problem for the Senate because it opened appropriation bills to a torrent of private claims as Senators log-rolled one another to add funds for these claims to general appropriations. The Senate response to this problem was adoption of a rule in 1850 providing that:

No amendment proposing an additional appropriation shall be received to any general appropriation bill unless it be made to carry out the provisions of some existing law, or some act or resolution previously passed by the Senate during that session, or in pursuance of an estimate from the head of some of the Departments. . . . 25/

The Senate amended its new rule in 1852 to permit unauthorized appropriations "moved by direction of a standing committee of the Senate." 26/

24/ Kerr noted in 1895 that "the Senate no longer claims the right of originating appropriations, because the right has ceased to be of any practical importance, being a disadvantage rather than an advantage, since, under the present system, the Senate makes very radical changes in the appropriation bills which the House has, ordinarily, no time to consider or amend." Clara H. Kerr, *The Origin and Development of the United States Senate*, Ithaca: Andrus and Church, 1895. p. 71.

25/ The word "amendment" in the rule refers to any change made by the Senate to the House-passed appropriation bill.

26/ In 1854, the Senate further amended the rule to permit unauthorized appropriations proposed by select committees.

This rule, less stringent than the parallel House rule, was crafted to preserve the Senate's advantage vis-a-vis the House. Because it acted after the House, the Senate often was asked to consider estimates that were not in the House-passed bill. This situation was the basis for excluding departmental estimates from the rule against unauthorized appropriations; exclusion of items proposed by Senate committees from the rule was designed to give these committees unrestricted opportunity to propose changes in House-passed appropriations.

While the Senate had good reasons for permitting these exceptions, it also faced a problem that became more severe as the Government grew larger and the business of appropriations more complicated. Due to its "unlimited debate" tradition, Senate permissiveness with respect to legislative riders often led to serious delays in passing appropriation bills. But it was not until 1877 that the Senate expressly proscribed legislation in appropriation bills by adopting a rule that has continued to be part of its standing rules for more than a century: 27/

No amendment which proposes general legislation shall be received to any general appropriation bill; nor shall any amendment not germane or relevant to the subject-matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto. . . .

The House and Senate rules did not put an end to unauthorized appropriations or to legislation in appropriation bills. Self-restraint

27/ The current text of the rule is: "On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received which does not directly relate thereto . . ." Rule XVI, paragraph 4.

without rules was replaced by self-enforcement of the rules. Just as when they had no written rules on the subject, the House and Senate remained the masters of their own practices and could ignore the distinction between legislation and appropriation whenever it suited them. Nevertheless, it would be wrong to conclude that the rules made no difference in Senate and House behavior. They served as caution flags, as reminders of the historic distinction between the two classes of congressional action, and as opportunities for Members to raise points of order when the rules were violated. Enforcement of the rules was selective and driven by the conveniences of the moment; but the rules almost certainly constrained legislation in appropriation bills. An inspection of the appropriation acts passed during the 1850-70 period suggests that most contained legislation, though limited and modest in scope. The record does not support those who claim that there was more legislation in appropriation acts after the rules were adopted than before. 28/

BLURRING THE DISTINCTION: THE DISPERSION OF APPROPRIATIONS JURISDICTION

During the formative years, the distinction between legislation and appropriation was reinforced by assigning the two types of actions to different sets of congressional committees. Legislation was in the custody of the various legislative committees; most appropriation bills were reported by the House Ways and Means and Senate Finance Committees. However, the workload of these committees was greatly increased by the financial burdens of

28/ For a contrary view, see Kerr, p. 78. In this writer's view, Kerr selectively quotes a few Senators but offers no concrete evidence as to the increase in legislation on appropriation bills.

the Civil War. As a consequence, jurisdiction over the appropriation bills was transferred to newly created appropriation committees. The House made this move in 1865; the Senate followed suit two years later.

With establishment of the appropriations committees, the relationship between legislation and appropriations took on an added dimension. The appropriation and legislative committees came to represent divergent perspectives on the role of Congress. The legislative committees were principally interested in the agencies and activities of Government; the appropriations committees were concerned about the financial condition of the Government. The distribution of power between the two sets of committees enabled Congress to balance both perspectives. 29/ Congress could address the needs of agencies without losing sight of demands upon the resources of Government. But the balance could be upset by shifts in the sentiment of the House or Senate.

One such shift occurred in 1876, setting the stage for more dramatic shifts during the next decade. The issue was the 1837-38 House rule against unauthorized appropriations. Over the years, the rule had been interpreted to permit salary increases but not reductions in appropriation bills. 30/ The

29/ During debate in 1884 on a proposal to transfer the District of Columbia appropriation from the Senate Appropriations Committee to the District of Columbia Committee, Senator Hall remarked: ". . . there is a feeling on the part of other committees that the control of the money of the Government . . . should be in the hands of the committee raised to consider the interests and concerns of that Department. A Senator expressed it to me only a few moments ago quite epigrammatically. He said: 'You give us power to legislate, but that is good for nothing without the money to carry it out.'" Cong. Record, vol. 16, Jan. 8, 1884, 275.

30/ This interpretation was based on the provision in the House rules allowing unauthorized appropriations for carrying on the departments of Government.

legislative committees saw this interpretation as a proper balancing of legislative and appropriation interests. In their view, if salaries could be reduced through appropriations, the appropriating committees would be able to curtail Government agencies and undo the legislation passed by Congress. The House Appropriations Committee, however, saw the interpretation as a severe restraint on its role. Since positions, salaries, and other aspects of agency operations were meticulously detailed in law, the Committee feared that it would be confined to a clerical task of adding up and making minor adjustments in the expenses of Government.

Its solution, the "Holman rule," amended the 1837-38 rule to provide that:

Nor shall any provision in any such [general appropriation] bill or amendment thereto, changing existing law, be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures. 31/

House debate on the new rule was punctuated by protests that it would open appropriation bills to legislation and would concentrate legislative power in the Appropriations Committee. Representative James Garfield, a former chairman of the Committee, warned that "to give this Appropriation Committee such a general sweeping power now is substantially to render obsolete the power of all the other committees of the House." 32/ Representative Hale of Maine was troubled by "the tremendous and stupendous additional power that will thereby be poured into the already full lap of the Committee on Appropriations." 33/

31/ The first part of the Holman Rule was not a new restriction because the 1837 rule against unauthorized appropriations was interpreted to bar legislation in appropriation bills.

32/ Cong. Record, vol. 4, 44th Cong., 1 Sess., 445.

33/ Ibid., 447.

Barely a year after the Holman rule was adopted, the House divested the Appropriations Committee of jurisdiction over the rivers and harbors bill. In 1880, the Agriculture Committee won custody of the agriculture bill and in 1885 the appropriations for the Army, Military Academy, consular and diplomatic affairs, the Navy, the Post Office, and Indian affairs were transferred to other committees. The Appropriations Committee was left with six of the appropriations bills. The Senate dispersed jurisdiction over various appropriation bills in 1899.

The conventional interpretation of the jurisdictional loss in the House is that it was a reaction to the Holman rule. As has often happened during 200 years of congressional history, the concentration of power was followed by the dispersion of power. When the House Appropriations Committee reported legislation in its bills, it incited resentment of its authority and this ultimately led to the raid on its jurisdiction. ^{34/} Shortly after the Holman rule was adopted, an appropriation bill provided for the transfer of the Indian Bureau from the Interior to the War Department. The chairman of the House Rules Committee (which had recommended adoption of the rule) exclaimed:

I never dreamed that this rule would have so loose an interpretation as has been given to it. I never dreamed that it would be carried so far as that you might tack on legislation that would extend to every department of the Government. . . . ^{35/}

^{34/} Three years after the Holman Rule was adopted, James Garfield predicted that "if this rule be continued in force, it will be likely to break down the Committee on Appropriations, and disperse the annual bills to several committees, so that the legislation on that subject will not be managed by any one committee, nor in accordance with any general and comprehensive plan." James A. Garfield, National Appropriations and Misappropriations, The North American Review, No. 271, June 1879.

^{35/} Remarks of Rep. Cox, quoted in Congressional Record, vol. 9, Pt. 1, 46th Cong., 2d Sess., 495.

Under the guise of retrenchment, riders repealing some of the Reconstruction Laws were placed in appropriation bills. One rider barred use of the Army to enforce the civil rights laws at the polls; another repealed various laws that had prevented many southerners from serving on juries. 36/ These riders were as controversial a century ago as anti-abortion riders have been in recent times and their enactment incited opposition to the House Appropriations Committee and the Holman rule. 37/

But this was not the whole story. Legislation in appropriation bills did not begin with the Holman rule nor did the volume of such legislation increase markedly in the years immediately after the rule was adopted. In the four years preceding adoption of the Holman rule, 88 sections with legislative provisions were included in general appropriation acts. 38/ Quite understandably, Members irked by a particular rider would complain that there was more legislation in appropriation bills than ever before, but there is little evidence to support these claims. Moreover, if legislation in appropriations was deemed to be the problem, the worst possible remedy would have been to give legislative committees jurisdiction over appropriation bills.

The House and Senate took jurisdiction of major appropriations from the Appropriations Committees because other congressional committees were unwilling to permit the main business of Congress to be concentrated in a few hands. In the last quarter of the 19th century, appropriations dominated the agenda of Congress. In a typical session, more than half of the pages of public laws

36/ See Congressional Record, vol. 10, Pt. 1, 46th Cong., 2d Sess., 852, remarks of Rep. Goode.

37/ The Holman Rule was revised in 1880, and dropped in some sessions of Congress. It has been continuously in effect since 1911.

38/ See Congressional Record, vol. 10, Pt. 2, 46th Cong., 2d Sess., 853.

in the Statutes were devoted to appropriation acts; in some years, more than two-thirds of the pages dealt with appropriations. Most of the other work of Congress was extremely limited in scope and pertained to the District of Columbia, the construction of bridges over navigable waters, and other narrow matters. Broad, programmatic legislation was rare. To a significant degree, Congress made national policy by appropriating funds to Federal agencies. The incredibly detailed appropriation bills were the vehicles for deciding what agencies did and did not do. The number and salaries of their employees were set in appropriation bills as were many other "details of administration." 39/ In effect, Congress legislated by appropriating. Without violating the technical distinction between the two classes of congressional measures, appropriations had legislative effect.

The de facto conjoining of appropriation and legislative decisions was most evident in the annual rivers and harbors bill which provided funds for projects in hundreds of congressional districts. If funds were appropriated for a project, it was constructed; if no funds were made available, the project was not undertaken. For a number of years, this legislative-appropriation linkage was recognized in a sequential referral procedure that gave joint jurisdiction over the rivers and harbors bill to the House Commerce and Appropriations Committees. It is not surprising that this bill was the first to be taken from the Appropriations Committee.

39/ In Congressional Government, Woodrow Wilson complained about congressional involvement in "the details of administration." Nevertheless, he generally approved of detailed appropriation bills. See Woodrow Wilson, Congressional Government, Boston: Houghton Mifflin Company, 1885. p. 150-2.

The dependence of legislation on appropriations is inherent in the congressional system, but in the late 19th century, the growth of Government (the first big peacetime expansion in U.S. history) rendered this arrangement unacceptable to many committees and Members of Congress. The number of civilian employees tripled between 1870 and 1890 and much of this growth was "authorized" in appropriations acts. The expansion might not have been as vigorous if the Appropriations Committee exercised a tight hold over spending. It will be recalled that the purpose of the Holman rule was to retrench expenditures, not to legislate; and in the first years that the rule was applied, the House was quite parsimonious in appropriations. The raid on the jurisdiction of the Appropriations Committee was due principally to the desire to provide more ample appropriations. Writing in 1892, former Speaker Thomas B. Reed acknowledged that the House

ordered the change because it wanted less restriction and more freedom in its appropriations. In other words, the new committees of appropriations are not the cause of the appropriation increase, but the result of, or more exactly, the medium by which the result was attained. The House, representing the country, wanted larger appropriations, and took the proper course to obtain them. . . . The result has been larger appropriations. 40/

The jurisdictional battle was the first round in the continuing conflict between the legislative and appropriation committees of Congress. As long as congressional sentiment favored the enlargement of Government, the legislative committees held the upper hand. It was not until the 1920s when the "economy and efficiency" mood swept through Congress that custody of the money bills was returned to the Appropriations Committees.

^{40/} Thomas B. Reed, Spending Public Money, The North American Review, No. 424, March 1892. p. 322.

The placement of legislative and appropriation jurisdiction in the same committees inevitably weakened the separation between legislation and appropriations. In the late 19th and early 20th centuries, the number of riders and legislative provisions increased greatly. According to one count, the appropriations enacted during the 65th Congress (1917-19) contained 296 legislative provisions while the next Congress placed 223 such provisions in appropriation acts. ^{41/} The Army and Naval appropriation acts were the vehicles for much of the legislation dealing with the armed forces, but even some of the appropriation measures still in the jurisdiction of the Appropriations Committees contained numerous legislative provisions.

Despite their mass of legislation, the appropriation bills never lost their distinct identity. They continued to be supply bills providing funds for thousands of objects of expenditure. The detailed appropriations combined with the inclusion of legislation made the appropriation bills the most prominent aspect of congressional workload. The appropriation acts sprawled across hundreds of pages in each volume of the Statutes and appropriation business consumed the bulk of floor time, especially in the House where the measures were originated.

REINFORCING THE DISTINCTION BETWEEN LEGISLATION AND APPROPRIATIONS

The Budget and Accounting Act of 1921 established a Presidential budget system. One year earlier, the House consolidated jurisdiction over all appropriation bills in its Appropriations Committee; one year later, the

^{41/} Luce, p. 427.

Senate returned all such measures to its Appropriations Committee. These related moves strengthened the distinction between legislation and appropriation and led to a reduction in the amount of legislation in appropriation bills.

Neither the House nor the Senate returned to the status quo that prevailed before the jurisdictional divestitures of the 1880s and 1890s. Each chamber grafted onto its rules provisions that reflected its particular concerns. The House, which had taken the initiative in establishing the new budget system, wanted to ensure that funds would not be provided in legislation. Thus, the House adopted a provision designed to end special appropriations reported by legislative committees:

No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. 42/

The Senate, which tended to favor higher expenditures, wanted to guard against excessive concentration of power in its Appropriations Committee. It amended the rules to bar the Appropriations Committee from reporting "new or general legislation" in an appropriation bill and providing for recommitting an appropriation measure if a point of order were sustained against the bill. 43/

The jurisdictional and procedural changes put into place the authorization-appropriation system that prevailed for more than half a century--until the Congressional Budget Act of 1974. But congressional

42/ The Senate did not adopt a parallel provision prohibiting its legislative committees from reporting appropriation measures.

43/ Senate Rule XVI, paragraph 2.

practices continued to evolve after these changes were promulgated. A typical appropriation made in 1970 differed substantially in structure and content from one enacted 30 or 40 years earlier; a major authorization approved by Congress after World War II tended to differ from one passed before the New Deal. In its appropriations and authorizations, Congress adapted over the years to fundamental changes in the size and role of the National Government. As the scope of Government was enlarged, authorizations became more "programmatic" and appropriations were converted from line-item lists into lump sums for Government agencies or activities.

During the 1920s, the phrase "authorized to be appropriated," virtually unused before then, was frequently inserted into legislation. Prior to then, Congress relied on implicit authorizations to satisfy its rules. The fact that a law was on the books made an item eligible for an appropriation. But when it tightened the rules, Congress relied on explicit authorizations. The "authorized to be appropriated" language was a clear indication that an item was eligible under the rules of the House and the Senate for an appropriation. But the phrase was not yet boilerplate in all legislation. In the 1920s the phrase was used almost exclusively for a specific project or activity, and the authorization was almost always for a definite amount. In 1926, for example, Congress authorized to be appropriated specific amounts for a commission to inspect the Civil War battlefield at Appomattox, U.S. participation in the Philadelphia Sesquicentennial celebration, payments to the Sioux Indians, U.S. participation in the World Poultry Congress, and for many other particular items. This type of definite authorization continued through the 1930s. The 1937 Congress enacted more than 100 measures with specific

amounts authorized for specific purposes. On May 6 of that year, President Roosevelt signed into law 18 separate measures authorizing appropriation of fixed amounts for designated purposes. 44/

Many of these authorizations were for purposes which prior to the rules changes might have received special appropriations. Most dealt with a single matter, the sums involved usually were quite small, no fiscal year was designated, and the appropriation was for a non-recurring expense. Congress continued to make special appropriations for a single purpose, but almost all were in the form of joint resolutions reported by the Appropriations Committees. 45/ In 1930, for example, special appropriation acts provided funds for (among other items) restoration of the frigate Constitution, U.S. participation in the Leipzig Fur Trade Exhibition, disaster relief in Porto [sic] Rico, and control of the Mediterranean fruit fly. The need for special appropriations did not abate until Congress switched from itemized to consolidated appropriations for Federal agencies.

While specific authorizations became standard during the 1920s, there was no single format for legislation establishing Federal programs or authorizing Government agencies to conduct particular activities. A 1930 law providing for the coordination of public health activities did not contain any "authorized to be appropriated" language, while another law enacted in the same year authorized "such sums as may be necessary" for an increase in the

44/ 50 Stat. 128-35.

45/ A joint resolution has the same statutory effect as a bill, but often is used for temporary measures.

White House police force. One 1930 authorization for the Bureau of Fisheries specified escalating amounts for each of five fiscal years; another, for forest roads, authorized equal amounts for two fiscal years.

As the Federal Government expanded in the 1930s, broad, programmatic legislation became more common (though most legislation continued to deal with a single item). The programmatic legislation grouped various related activities into a single measure providing for the continued operation of a Government agency. Authorizations limited in dollars or time were not deemed suitable for the continuing operations of government; hence, it became customary to authorize "sums as may be necessary" for many of the major programs established during the New Deal era and after World War II. These permanent authorizations spelled out the manner in which the program was to be operated, the duties and authority of the agency administering it, how the funds were to be used, and other relevant matters, but they did not authorize a fixed amount of money. Financial decisions for most programs were made in annual appropriation bills. The major exceptions were construction projects and grant-in-aid programs which usually were authorized for definite amounts for fixed periods of time.

Far from being an old practice, "such sums as may be necessary" authorizations were a byproduct of the permanent, active state established by the New Deal and enlarged after World War II. Two salient characteristics of the modern state contributed to permanent authorizations. One was Congress' willingness to delegate power to the President and executive agencies; another was the sense that the new programs would be permanent responsibilities of the National Government and not temporary responses to economic crisis. These factors encouraged Congress to establish programs that did not require periodic reauthorization.

The evolution of multi-purpose program authorizations was paralleled by a shift from appropriations for particular items to lump sum appropriations for administrative units or programs. The transition began in the early 1920s and was not completed until the early 1970s. A key development was the Classification Act of 1923 which standardized Federal grades and pay and enabled Congress to appropriate a lump sum for all the salaries in each account. Equally significant was the progressive enlargement of Government which made it difficult for Congress to effectively control the individual items. Over time, therefore, the appropriations for each administrative unit were consolidated into a single "salaries and expenses" account, though construction projects and major programs were often funded separately.

As appropriations were consolidated, it became common for the text of the appropriation to cite the statutory authority upon which it was based. Despite this, however, consolidation made it difficult for Congress to relate authorization and appropriation decisions to one another because funds for newly authorized programs often were provided in existing appropriation accounts. This practice had the effect of further separating authorizing and spending decisions.

The 1920-22 rules adjustments significantly curtailed the number of riders in appropriations, but did not purge them altogether. Unrelated riders were rare, but limitations and legislation having a direct bearing on the appropriation were common. In tandem with the consolidation of appropriations, Congress began to group many legislative provisions into "General Provisions" sections added to each regular appropriation bill.

In sum, the contemporary forms of authorizations and appropriations evolved during the 1920-1950 period. Prior to this period, the authorization of appropriations usually was implied--the existence of a law setting up a

program or agency sufficed; authorizations now became explicit. Where legislation once adhered to the rule confining each bill to one object, it now become customary to combine the various components of a program into a single measure. Where appropriations once were line itemizations, now they were consolidated for each program or agency. Special appropriations virtually disappeared.

CHIPPING AWAY AT THE DISTINCTION: BACKDOOR SPENDING AND
TEMPORARY AUTHORIZATIONS

The practice of permanent authorizations and annual appropriations reinforced the distinction between legislation and appropriation. The former authorized programs; the latter financed them. In 1950, the wall of separation appeared to be higher than at any time in more than a century. But it was not so high as to deny legislative committees any direct voice in financial decisions. In retrospect, it can be seen that Congress had a double standard, one for programs operating through the normal authorization-appropriation sequence, another for programs favored with "backdoor" status. But backdoor spending was not the only challenge to appropriations control over Federal finances. In the postwar era, authorizing committees gained a more direct voice in financial decisions by making authorizations for a limited period of time. By 1975, these committees were major participants in making financial policy. No single change or episode, such as the rules or jurisdictional changes that occurred in earlier periods, accounted for this transition; rather, there was a chipping away at appropriations control through many piecemeal moves which in the course of a quarter of a century aggregated into a significant realignment in the relationship between the authorizing and appropriating processes. If there was one overriding theme to this

change, it was that decisions about programs cannot be separated from decisions about finances.

Backdoor Spending

Through backdoor spending, legislative committees provide funds for programs in their jurisdiction. The common element of all backdoor spending is that the decisive congressional action is taken outside the regular appropriation process. As the word "backdoor" suggests, this form of action is conceived as an evasion of appropriation control, though other factors may account for it.

Backdoor spending comes in a number of forms. (1) Borrowing authority enables an agency to finance its program with funds borrowed from the Treasury or the public. From its first use in 1932 for the Reconstruction Finance Corporation until 1975, when the Congressional Budget Act restricted this type of transaction, more than \$130 billion in borrowing authority was approved by Congress. Almost 90 percent of this amount was provided in legislation rather than appropriation. Under the precedents of the House, borrowing authority is not deemed to be an appropriation; hence, the rules do not bar its inclusion in legislation. ^{46/} (2) Contract authority enables an agency to obligate funds before it gets an appropriation. The obligation is liquidated by a subsequent appropriation, but the Appropriations Committees must provide the necessary funds. In the decade preceding the 1974 Budget Act, contract authority averaged approximately \$10 billion per year. Most of this was for highway construction. (3) Entitlements obligate the Federal Government to

^{46/} See Jefferson's Manual and Rules of the House of Representatives, 96th Cong, 2d Sess., p. 546.

make payments to eligible persons as prescribed by law. Some entitlements, such as social security and medicare, have permanent appropriations; the funds become available without annual action by Congress. Some entitlements, such as veterans' benefits and public assistance, require annual appropriations, but the Appropriations Committees have little discretion over the amounts provided. More than \$400 billion is spent each year on various entitlement programs. 47/

The Joint Study Committee on Budget Control estimated in 1973 that because of backdoor spending, the Appropriations Committees had effective control over only 44 percent of the Federal budget. 48/ The 1974 Budget Act stipulated that new contract and borrowing authority can be effective only to the extent provided in appropriation acts. The effect of this rule was to convert these forms of backdoors into standard authorizations that are funded through the appropriation process. 49/ Significantly, however, the 1974 Act did not bar entitlement legislation, though it prescribed requirements that have inhibited the enactment of new entitlements. 50/

47/ Section 401(c)(2)(C) of the Congressional Budget Act defines entitlement legislation as authority "to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, if, under the provisions of law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law." 88 Stat. 318.

48/ H. Rept. No. 93-147, 1973. p. 9.

49/ The Budget Act, however, exempts certain programs such as those financed by trust fund receipts, from the bar against backdoor contract and borrowing authority.

50/ The main provisions with respect to entitlements are that entitlement legislation: (1) cannot be considered before adoption of the first budget resolution; (2) cannot (except if reported between October 1 and the end of the calendar year) take effect before the start of the next fiscal year; and (3) cannot cause total budget authority or outlays to exceed the totals in the second (or later) budget resolution.

It would be erroneous to regard backdoor spending exclusively as an effort to evade appropriation control, though this certainly is one of its principal effects and in some instances the main motivation. The antecedents of backdoor spending go back to the early 19th century when Congress entitled various persons to payments from the Treasury, authorized certain obligations (such as for military needs) in advance of appropriations, and permitted some agencies to spend borrowed funds. Many special appropriations had features similar to contemporary backdoors, though the amounts involved usually were quite small.

In recent times, backdoor spending (especially for entitlements) has been associated with permanent appropriations which are established in legislation and do not entail annual review by Congress. But permanent appropriations are not a new problem; in 1880 they accounted for approximately 47 percent of total appropriations. 51/ While some dormant or minor permanent appropriations were repealed at various times, the problem has vexed Congress for many years. The Legislative Reorganization Act of 1946 authorized and directed the House and Senate Appropriations Committees to study

existing permanent appropriations with a view to limiting the number of permanent appropriations and to recommend to their respective Houses what permanent appropriations, if any, should be discontinued. 52/

Similar positions toward these appropriations were taken by the Second Hoover Commission (1955), the Joint Committee on the Organization of the Congress

51/ Wilson, p. 152-3. It should be noted that most permanent appropriations were for payment of interest on the debt incurred during the Civil War. As the debt was paid off, permanent appropriations declined as a percentage of total expenditures.

52/ See 139(d) of the Legislative Reorganization Act of 1946. 60 Stat. 833.

(1966) and the Legislative Reorganization Act of 1970. 53/ Yet permanent appropriations continue to be a prominent--and growing--part of the Federal budget.

Backdoor spending and permanent appropriations have more to do with the role of the Federal Government than with the procedures of Congress. Most of the major borrowing and entitlement programs were launched in the 1930s when the Government intervened massively to prop up the economy and to stabilize individual incomes. Faced with an unprecedented economic crisis, Congress responded with financing instruments deemed most apt for the purposes at hand. It devised borrowing authority schemes principally to enable the agricultural and housing sectors to obtain needed credit. Over the years, it extended this type of backdoor authority to other commercial-type operations (such as the TVA, the Postal Service, and the Export-Import Bank). It devised entitlements as a means of protecting the current and future incomes of workers and others vulnerable to cyclical or structural difficulties. The fact that many entitlements were made subject to annual appropriations suggests that the driving force behind them was not to bust appropriations controls. Indeed, entitlements pervade industrialized democracies and are more extensive in many other countries than in the United States.

An entitlement merges the legislative and the spending decision in a single congressional action, though the actual funds might be provided in appropriations. The reason for this is that the concept of an entitlement is incompatible with genuine appropriation control. If Congress wants to control through appropriations, it cannot provide an entitlement; if it wants

53/ S. Rept. No. 89-1414; and sec. 353 of the Legislative Reorganization Act of 1970.

to establish an entitlement, it cannot maintain control through annual appropriations. The choice between the two is not a procedural matter that can be regulated by House and Senate rules. It is a choice between stable expectations and annual control. ^{54/} The massive entitlements that now consume more than half of the Federal budget were established despite rules that separate legislation from appropriation. If Congress wants to uphold that separation, it cannot legislate entitlements. If it wants to control spending on entitlements, it has to rely on methods other than annual appropriations.

Some programs established as backdoors can function effectively as standard authorizations funded in annual appropriations. The first general revenue sharing program evaded the appropriation process, but when the program was renewed, it was subjected to that process. Similarly, the initial construction grants for water pollution control facilities were provided through backdoor contract authority, but after passage of the Budget Act, the program was reauthorized as a standard authorization.

There is nothing intrinsic to contract or borrowing authority that requires either to violate the distinction between legislation and appropriation. Such is not the case, however, for entitlements.

Temporary Authorizations

The developments during the 1920-50 period gave authorizing legislation a twofold purpose: to authorize the operations of Government agencies, and

^{54/} For a discussion of the relationship between budget control and other political values, see House Committee on the Budget, Congressional Control of Expenditures, January 1977. p. 5-8.

to enable Congress to make appropriations. Thus, one facet of the authorization process looked outward to the executive branch; the other looked inward to the appropriation work of Congress. To permanently authorize "such sums as may be necessary" meant that the legislative committees entrusted Government agencies and the Appropriations Committees with the operation and finances of the programs in their jurisdiction. In the aftermath of the New Deal and the emergence of the modern Presidency, Congress was willing to cede a great deal of discretion to executive officials. Programmatic authorizations were lengthier but less detailed than the single-purpose legislation that once predominated. Congress also enlarged the effective discretion of its Appropriations Committees. They had a wider margin for choice in recommending spending levels for programs than they had for the salaries and expenses of agency operations.

Since the 1950s, Congress has progressively narrowed the effective discretion of Government agencies and the Appropriations Committees. It has converted some major programs and agencies from permanent to temporary authorizations and has authorized most new programs on a temporary basis. More than two dozen Federal programs and agencies (including virtually all defense activities) now have annual authorizations while numerous programs (particularly grants-in-aid) have multi-year authorizations. ^{55/} The differences between annual and multi-year authorizations are such as to require separate discussion of each.

The typical annual authorization is permanent legislation to which a one-year "authorization of appropriations" clause is attached. It is not genuine

^{55/} For a discussion of annual authorizations, see: Fisher, Louis. Annual authorizations: durable roadblocks to biennial budgeting. Public Budgeting and Finance, Spring 1983: 23-40.

sunset legislation since the permanent provisions would continue in effect even if Congress failed to renew the authorization. In renewing the authorization, Congress can simply extend the authorization clause for another year without touching any other part of the legislation, or (as often happens) it can use the reauthorization as a vehicle for making other changes in existing law. Annual authorizations can be attempts to influence (or control) Government agencies or to influence appropriation outcomes. After Sputnik, Congress put space exploration on an annual authorization; after Vietnam, it converted the State Department to an annual authorization; after Watergate, it did the same for the Justice Department and intelligence agencies. Some annual authorizations are intended to pressure the Appropriations Committees to provide more funds. Examples of these were annual authorizations for the Atomic Energy Commission (1954), the Coast Guard (1963), and the Maritime Administration (1967).

In a technical sense, annual authorizations do not impair the distinction between legislation and appropriation. Congress still finances annually authorized programs in appropriation measures, and the Appropriations Committees are not required to provide the authorized amount. As a practical matter, however, an annual authorization is an important (and sometimes the main) congressional instrument for making financial decisions. To begin with, annual--unlike permanent--authorizations tend to be for fixed amounts. Instead of authorizing such sums as may be necessary, Congress authorizes a definite amount for the next (or, in some cases, the current) fiscal year. It then makes, usually in the same session of Congress, an appropriation covering the same period for which the particular program was authorized. This means that before the appropriation is considered, Congress has already gone on record

concerning the program's financial needs. It is quite understandable, therefore, that the appropriation usually is close to the amount authorized.

When a program has an annual authorization, the main congressional debate occurs when the authorization is considered. This debate is often framed in financial terms--the level of spending for the program, the items that should be funded, floor proposals to add or delete funding for particular items, and so forth. The subsequent appropriation often makes marginal changes in the spending totals or in various items, but the basic program and financial plan set forth in the authorizing legislation usually survives intact.

Multi-year authorizations have different purposes than annual ones. Paradoxically, programs with annual authorization tend to be more permanent in character than ones which have multi-year authorization. The reason for this is that many multi-year programs are conceived of in terms of a particular activity (airport construction, for example) or a particular objective (such as equalizing educational opportunity), and the legislation reflects the notion that once the activity is completed or the objective attained the Federal involvement will cease.

Multi-year reauthorizations tend to be more programmatic than annual ones--that is, they do not just renew the program but often make major substantive changes as well. Multi-year authorizations usually specify definite amounts for each fiscal year, but the effect on appropriations is less than is exercised by annual authorizations. While the latter come close-to being "fully funded," it is not uncommon for an appropriation to be for less than 50 percent of the amount authorized for a multi-year program. Two factors explain this discrepancy. First, multi-year authorization and annual appropriation decisions normally are not made in

the same session of Congress; second, multi-year legislation often authorizes escalating amounts for each fiscal year. The purpose is to make a case for future spending increases, but the effect is to give the Appropriations Committees more latitude in making financial decisions.

The appropriations process is wedged between expiring authorizations and backdoor spending. 56/ The former often delay action on appropriations; the latter preempt appropriations. The former influence the amounts available for expenditure; the latter determine the amounts. The two practices have weakened the distinction between appropriations and legislation.

ENTER THE BUDGET PROCESS

In 1974, Congress established a budget process to coexist with its established authorization and appropriations processes. The conditions that triggered this institutional change have been chronicled elsewhere, as have the operational features of the new process. For the present discussion, the most salient consideration is the change that Congress did not make. It did not discard or significantly alter its appropriations or authorizations machinery. In fact, this possibility was not seriously considered in any of the many proposals offered during legislative development of the Congressional Budget Act. 57/ From beginning to end, it was assumed that congressional budgeting would operate together with the two older processes.

56/ See Allen Schick, Backdoor Spending Authority, in Subcommittee on Budgeting, Senate Committee on Government Operations, Improving Congressional Control Over the Budget: A Compendium of Materials, 93d Cong., 1st Sess., March 27, 1973. p. 293-302.

57/ See Allen Schick, Congress and Money: Budgeting, Spending, and Taxing. Washington: The Urban Institute, 1980, especially Chapter III, p. 51-82.

The structure of coexistence was delineated by the 1974 Act, but the terms of the relationship were left for later development. The new process is to be coordinative rather than decisional. Congress continues to decide what to do and how much to spend in authorizations and appropriations, but these decisions are made in the context of a congressional budget. This budget is adopted twice each year (in the spring, before consideration of appropriations and backdoor spending, and in the fall, before the start of the fiscal year) in the form of "concurrent resolutions" that have no statutory effect. ^{58/} Congress does not establish programs or provide funds in its budget resolutions; rather, the resolutions set "macro" policy (total revenues, outlays, budget authority, surplus or deficit, and public debt) and allocate the outlays and budget authority among a number of budget functions (national defense, health, agriculture, etc.). The congressional budget thereby frames the overall policy and priorities within which particular program and spending decisions are made.

In providing for functional allocations in the budget resolutions, the framers of the Budget Act faced some of the issues that would later plague the new process. Some feared that if the Budget Committees were permitted to make functional allocations, they inevitably would trespass on the work of the Appropriations Committees. This concern led Representative Jamie Whitten (the current chairman of the House Appropriations Committee) to introduce a bill that would have restricted the budget resolutions to aggregate figures. Others argued, however, that unless the budget resolutions dealt with spending

^{58/} In 1982 and 1983, Congress adopted only the "first" resolution. It provided, however, that this resolution should have the binding effect of the "second" resolution if the latter was not adopted by October 1.

priorities, they would not be useful instruments of budget control. The Budget Act tilted toward this view, though it took care to ensure that the allocations were made to functions, not to appropriation categories.

The Budget Act also had to come to grips with the question of how particular program and spending decisions would be related to budget aggregates and functions. The Joint Study Committee on Budget Control favored a process that relied on numerous points of order to uphold the budget decisions, but the Budget Act limited substantive points of order to instances where legislation would violate the budget totals. The Act also provided for a "reconciliation process" for bringing appropriations, entitlements, and revenues into line with the totals in the second budget resolution. But the principal instrument of control contemplated by the Act was information. Congress would enforce its budget decisions by using cost estimates, 5-year projections, "crosswalks," and scorekeeping reports to compare pending legislation and appropriations to the levels set in the budget. ^{59/} With this information in hand, Congress would be free to make whatever decisions it wanted.

The Budget Act sought to strengthen the distinction between authorizations and appropriations by restricting backdoor contract and borrowing authority, by giving the Appropriations Committees a limited power to review entitlement legislation, and by setting deadlines for reporting authorizing legislation and completing action on appropriations.

^{59/} A "crosswalk" allocates the budget authority and outlays in a budget resolution among House and Senate committees. This procedure is prescribed by section 302 of the Congressional Budget Act. Its effects on authorizations and appropriations are discussed in the next section of this report.

During the more than 9 years that the budget process has been in operation, Congress has approved more than 100 appropriation acts, hundreds of authorizations, more than a dozen budget resolutions, and several reconciliation bills. The process has not fully stabilized yet and significant changes have been made in each year that it has been in operation. But the basic structure has remained intact. The budget resolutions do not contain any program or spending details other than the functional allocations. Yet the Budget Committees have often been accused of making "line item" decisions and of infringing on the jurisdictions of the appropriating and authorizing committees.

Complaints about an over-reaching budget process have undoubtedly been stimulated by its progressive enlargement. During the past five years, the process has been stretched from a single year to a multi-year scope; a credit budget (setting totals and making functional allocations for direct and guaranteed loans) has been added to the budget resolutions; reconciliation has been shifted from the end to the start of the annual budget cycle and has been vigorously applied to a broad range of committees and legislation; additional enforcement mechanisms have been devised; and the flow of detailed budgetary information has been increased enormously. 60/

Congressional budgeting operates on the boundaries of the appropriations and authorizations processes. It gets in the way of the two older processes, and they get in its way. Congress shapes program and spending decisions when it legislates and appropriates. There is no perfect or permanent solution to

60/ Many of these changes have been made without amending the Budget Act. The Budget Committees have relied on two "elastic" clauses in the Act to make these changes: sec. 301(a)(7) which permits inclusion in a budget resolution of "such other matters relating to the budget as may be appropriate;" and sec. 301(b)(2) which authorizes "any other procedure which is considered appropriate to carry out the purposes of this Act."

this boundary problem. It existed when Congress had two processes; it persists now that Congress has three. At the root of the problem is the fact that while the processes are distinct, they cannot be completely separate from one another. But it would be a mistake to conclude that because there are boundary problems the processes completely duplicate one another. The problem is at the boundaries, not in the cores, of the three processes.

There have been times in Congress' history when the borders have been protected, and there have been times when the borders have been battlegrounds. The present situation is rife with conflict, the lines separating the processes are less clearly defined than they once were, and, as the illustration in the opening paragraph of this report shows, the same issue can be considered in three processes. But the case of the Iranian ships also shows that the problem does not lie in the budgeting arena alone. In the next three sections, we will examine how congressional budgeting, appropriations, and authorizations get into each other's way.

THE "LINE ITEM" BUDGET PROCESS

A budget resolution is just the tip of the budgetary iceberg. Submerged beneath the visible aggregates and functions is a mass of program and financial detail. A budget resolution is hostage to its parts because the whole has little meaning unless the parts are known. To make and to interpret a budget requires that one understand how the figures in it are derived, the program and spending changes proposed in it, and the differences between various levels. When the President submits his budget, Members of Congress and committees are interested in how much more or less is recommended for particular elements. Similarly when a budget resolution is formulated, many of the interesting questions for Congress relate to its implications for particular programs and

committees. Does the amount for a certain function allow for increases to keep pace with inflation? Which programs are expected to grow or to shrink relative to others? How does the amount compare to last year's spending level, to what committees of jurisdiction want, to the President's recommendation, and which program and financial assumptions account for the differences? This train of questions leads inexorably to an examination of the budget's parts. As a veteran in congressional budgeting explained:

. . . . there may be no way that you can ensure that a budget process can be at the macro level one of the prices you pay for a budget process may be the fact that you have to focus on line items, basically on the theory that a budget is made up of parts and the parts have to be identified. . . . it doesn't make sense to have a budget unless you understand what the parts are. 61/

The Budget Committees are in a quandary when it comes to the budget's parts. If they restrict themselves to the aggregates and functions, they might not be able to defend or enforce their budget resolutions; if they talk about the parts, they will offend affected committees. The most prudent course since 1975 has been to make, but not publish, assumptions about the program and financial elements. Nevertheless, the evolution of the budget process has impelled participants to be more explicit about the parts than they were in the process' first years. We shall trace some of these developments by "walking through" the preparation and enforcement of a budget resolution.

CBO Baselines

The budget resolution has only 21 functions but there are more than 1,000 accounts in the Federal budget, and some of the big accounts consist of a

61/ Sante Esposito, The Authorization Process, Transcript of Briefing for the Task Force on the Budget Process, House Committee on Rules, June 24, 1982, p. 26.

number of sizeable programs. The Congressional Budget Office (CBO) maintains a current policy data baseline which projects the spending trend for each account over a 5-year period without taking into account possible changes in policy. This baseline provides a common set of computations for the various participants in the congressional budget process. When a reduction or increase is proposed, it is calculated in terms of deviations from this baseline. The current policy baselines are not published, but printouts are available to congressional committees and bits and pieces of the data find their way into various documents. It is not possible to understand what the numbers in the resolution mean except in terms of the baseline. Spending reductions mandated by the reconciliation process (about which more is said below) are computed in terms of the baseline. Analyses of the budgetary effects of particular bills are made in terms of the baseline. Allocations of the total budget authority and outlays to House and Senate committees depend on the baseline.

The authorizing and appropriating committees have mixed feeling about the detailed baseline data. On the one hand, they welcome the improved ability to interpret the resolutions; on the other, they resent the notion that the Budget Committees are making assumptions and judgments about matters in their jurisdictions.

The March 15 Views and Estimates Reports

These mixed feelings emerge in the views and estimates reports filed by House and Senate committees by March 15 each year. These reports, which are prescribed by the Budget Act, give the Budget Committees the recommendations of authorizing and appropriating committees on the matters in their jurisdictions. Although the Budget Act does not spell out how these reports

are to be prepared, it was assumed that "inasmuch as the initial budget resolution would deal only with macroeconomic issues and broad functional priorities, the various committees would not find it necessary to undertake any detailed consideration of budget matters in preparing their views and recommendations." 62/

It has not worked out quite this way. Over the years, the preparation of March 15 reports has become increasingly formalized and detailed. Many committees now hold formal markups of these reports and publish detailed markup documents. The reports themselves vary in structure and detail from committee to committee, but most offer precise recommendations on their programs. The views and estimates of House committees on the fiscal 1983 budget were so elaborate that they filled two volumes totaling over 1400 pages. 63/ Many committees keyed their recommendations to the CBO current policy baseline.

The March 15 process has done more than uncover a big part of the budgetary iceberg. It has sensitized authorizing committees to a far greater extent than in the past to the financial aspects of their programs. Before the Budget Act, most of these committees (including many that authorized for definite amounts) did not know how much was appropriated or spent for their programs. Now most of them have program by program comparisons of the amounts authorized and appropriated. This knowledge has spurred some committees to try to influence the amounts ultimately made available for their programs.

62/ H. Rept. No. 93-658, November 20, 1973, 37.

63/ These are published in House Committee on the Budget, Views and Estimates of Committees of the House on the Congressional Budget for Fiscal Year 1983. The reports of Senate committees are not compiled in a single document.

Formulation of the Budget Resolutions

The CBO baseline and the March 15 reports give the Budget Committees a great deal of backup when they prepare the budget resolutions. The members of these committees generally know how particular programs are likely to be affected if the allocations to the functions were to be raised or lowered. Making a congressional budget is not a pig-in-a-poke exercise. The House Budget Committee publishes the Chairman's Recommendations and uses this document to mark up the resolutions. The chairman recommends amounts for each function, and he also offers dollar recommendations for many programs, particularly those for which major changes are proposed from the President's budget or the CBO baseline. During markup, members who want to raise or lower the levels for particular functions usually discuss the programs they have in mind. Many of these program "decisions" are identified in the report accompanying the budget resolution. The Senate Budget Committee's briefing book (which is not published) has less program detail than was the case before the Reagan Administration took office and the Republicans gained control of the Senate. The Committee also publishes little program information in the reports on its budget resolutions. Nevertheless its members and other interested parties know what the resolution means for the programs that concern them.

Sometimes the program implications of a budget resolution are overtly used to influence appropriations decisions. In 1980, for example, Representative James Jones supported a floor amendment that would have added \$50 million to the appropriation for the Internal Revenue Service on the ground that "this amendment simply carries out the mandate of the first budget resolution for fiscal year 1981." This provoked Representative Jamie Whitten to observe:

It is my understanding that the budget resolution merely sets targets by function and does not deal with line items. One reason we are in trouble with budget resolutions now is the effort on the part of some to provide for specific line items. This is not the intent of the Budget Act and is beyond its authority. Unfortunately this ill-advised practice has caused a lot of our problems. 64/

The Reconciliation Process

The Congressional Budget Act contemplated that the first resolution would be a target and that the binding budget would be set in the fall, after program and financial decisions for the next fiscal year had been made in appropriations and other legislation. But almost from the outset, the first resolution became more prominent than the second. The latter was too late to influence budget outcomes significantly; the former would have little impact on what ensued if it were treated simply as a target. Accordingly, the Budget Committees began to examine pending legislation in light of the assumptions made for the first resolution. This meant that, in contrast to the expectations in the Budget Act, the key budget determinations preceded congressional action on appropriations and other spending legislation.

The status of the first resolution was strengthened in 1980 by attaching the reconciliation process to it. As used since then, reconciliation is a process for changing existing law to bring it into line with the levels set in the first resolution. It operates by means of instructions inserted into the first resolution, pursuant to which committees recommend and Congress enacts reconciliation legislation implementing the changes in law. 65/ The

64/ 126 Congressional Record, daily ed., Aug. 19, 1980. H7193.

65/ For a discussion of the purposes and procedures of reconciliation, see Allen Schick, Reconciliation and the Congressional Budget Process. Washington: The American Enterprise Institute, 1981.

reconciliation instructions specify the dollar reductions that each designated committee must recommend, but they do not mention any programs. The workability of reconciliation depends, however, on shared understandings as to what the dollar amounts mean and the program changes that have to be made to implement them. With only a few weeks to prepare legislation implementing the savings, committees could not meet the deadline if they had no notion of what they were expected to do. In 1981, the Senate Budget Committee detailed the program changes that it assumed in the reconciliation instructions, but with the following proviso:

Under the Budget Act, each committee that receives a reconciliation instruction is free to make the required savings in any manner it sees fit. The itemization considered by the Budget Committee does not have to be observed so long as each committee reports savings in an amount equal to the reconciliation instruction. 66/

The manner in which reconciliation was applied in 1981 vastly expanded the need for program detail. The instructions were directed both at entitlements (as in 1980) and at authorizations funded in annual appropriations. As a result virtually all committees with legislative jurisdiction were covered by reconciliation. This expanded scope offended many committees which were compelled to curtail programs that they had sponsored in authorizing legislation. The 1982 reconciliation was confined, with a few exceptions, to entitlements, and the number of committees drawn into it was about half the previous year's number. But for these committees the cutbacks they made were mostly based on the program assumptions developed by the Budget Committees.

The reconciliation instructions usually are implemented in an omnibus bill that incorporates the recommendations of the various committees directed to produce savings. Some of these committees have found it convenient to add

66/ This language was repeated for every committee receiving a reconciliation instruction. See S. Rept. No. 97-28, March 23, 1981.

unrelated legislation to the omnibus bill, thereby giving these provisions some protection against floor amendments or close scrutiny. In 1981, for example, major regulatory legislation was added to the reconciliation bill, along with other substantive legislation.

Section 302 Crosswalks

The Budget Act provides for the new budget authority and outlays in each resolution to be allocated to House and Senate committees which, in turn, subdivide their share of the budget among their programs or subcommittees. To make these crosswalks, the Budget Committees must have the detailed program and account data discussed earlier. By coding each account by committee and function, the Budget Committee can easily translate each resolution's program assumptions into committee allocations.

The Senate Budget Committee makes aggregate allocations to Senate committees. The only breakdown is between "direct spending" and "appropriated entitlements." It provides no functional or program details, though these are readily available to the affected committees. However, the House Budget Committee has progressively increased the number of sub-allocations made to House committees. For fiscal 1982 and 1983, it distinguished between "current level" and "discretionary action," and within each of these categories it showed the allocation by function. Thus, the House Appropriations Committee received more than 35 separate allocations of budget authority, compared to only one for the Senate Appropriations Committee. The House Budget Committee makes these itemized allocations to avoid situations in which committees over-spend their discretionary funds by under-estimating their mandatory expenditures.

The section 302 crosswalks and the program assumptions underlying them have taken on added significance because of a provision in recent budget resolutions requiring measures in excess of their 302 level to be "held at the desk." This procedure means that the bill, once passed, is not immediately "enrolled" and sent to the President for his signature or veto. This has not stopped much legislation, but it has compelled committees to consider the budget resolution's program assumptions in marking up legislation.

Enforcement of the Budget Resolutions

The reconciliation procedure and the section 302 controls are means of enforcing congressional budget resolutions. But the extent to which a resolution is enforced depends on the vigor and vigilance of the Budget Committees. In the earlier years of the budget process, enforcement was more vigorous and open in the Senate than in the House. The staff of the Senate Budget Committee prepared a detailed analysis of appropriations, entitlements, and many authorizations, and this was often used by the chairman to comment on (and sometimes to oppose) pending legislation. Since 1980, however, the Committee has played a more limited role, relying on reconciliation to produce the desired outcomes.

But the House Budget Committee has moved in the opposite direction. Its main enforcement instruments are "early warning reports" on appropriations, entitlements and certain authorizations scheduled for floor consideration. These reports, prepared by the committee staff, are placed in the Congressional Record and are keyed to the amounts allocated in the section 302 reports. In analyzing a particular bill's budget impact, the early warning report "pays particular attention to programs over which a committee has spending

discretion. . . . [but] the only procedural sanction is deferred enrollment which causes a conference report to be held at the desk if the discretionary budget authority exceeds its target." 67/

Both Budget Committees get involved in program and financial details by policing various provisions of the Budget Act. These include procedural matters such as the May 15 reporting deadline for authorizations, and substantive matters such as restrictions on backdoor contract and borrowing authority. Through these activities, the presence of the Budget Committees is felt year-round, not just when budget resolutions are being debated. Each Budget Committee maintains continuing liaison with authorizing and appropriating committees, and frequently advises them of the budget implications of their work. It is not surprising that the budget makers are often regarded as interlopers.

To Sum Up

The Budget Committees encroach more by doing than by deciding. The power to appropriate and to authorize remains with the committees of jurisdiction, but this power is exercised under the watchful eye of budget monitors and is examined in the light of budget considerations. Congress is awash in budgetary data and the talk on Capitol Hill is so dominated by budget matters that one must conclude that there is much more to the budget process than the pages of a budget resolution.

67/ This language appeared in the early warning reports on the fiscal 1983 appropriation bills. The House Budget Committee changes the structure and contents of these reports from time to time.

THE "LEGISLATING" APPROPRIATIONS PROCESS

There have been few periods in American history during which appropriation measures have been free of legislative provisions. Indeed, the House and Senate rules which bar legislation in appropriations have accommodated to the reality of the situation. Clause 3 of House Rule XXI requires reports accompanying appropriation bills to "contain a concise statement describing fully the effect of any provision . . . which directly or indirectly changes the application of existing law." ^{68/} Senate Rule XVI requires the appropriations committee to identify each recommended appropriation that does not "carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session."

Despite their rules, the House and the Senate frequently approve legislation in appropriation bills. Legislation can be included if no point of order is raised against it or if the matter is deemed to be a limitation. The distinction between limitations and legislation has been the subject of thousands of parliamentary rulings, and it is hard to summarize these succinctly. Nuances and words often decide the way the ruling goes. But as a general proposition, a proviso is likely to be deemed legislation if it depends on a new action or determination by a Government official; it is likely to be regarded as a limitation if its sole effect is to withhold funds from a particular object. An anti-abortion proviso that was contingent on a determination regarding the health of the mother was ruled to be legislation; an absolute ban on use of the funds for abortions was held to be a limitation.

^{68/} This clause was inserted into the House rules by H. Res. 988 (1974).

The House often waives the rule against legislation in appropriation bills by adopting a "special rule." The Senate permits unauthorized appropriations recommended by a Senate committee, recommended pursuant to a budget estimate made in accordance with law, or for legislation passed during the session by the Senate but not yet enacted into law. The Senate often disposes of points of order by deciding whether the matter is germane to the bill as passed by the House. If the Senate votes that it is germane, the point of order falls. 69/

Judging from the frequency with which Members complain about legislation in appropriation bills, it would seem that this practice has become widespread in recent years. Senator Warren Magnuson, who chaired the Senate Appropriations Committee, observed in 1979 that "when you cannot get anything through a legislative committee, you tack it on an appropriation bill." 70/ One can go back to most periods in American history and cull similar complaints from congressional debates. But genuine legislation is certainly placed in general appropriations less frequently than it once was. Few unrelated riders are attached to appropriations these days. Yet in some ways, the current problems are more pervasive than they once were.

The failure to renew expiring authorizations in a timely manner has compelled Congress to enact numerous unauthorized appropriations. Louis Fisher of the Congressional Research Service has found that some annual authorizations are not renewed at all but the affected programs are continued by unauthorized

69/ For an explanation of this procedure, see Floyd M. Riddick, Senate Procedure S. Doc. 97-2 (1981). p. 129-34.

70/ 125 Cong. Record (Sept. 27, 1979) 26426.

appropriations. 71/ The U.S. Department of Energy operated on this basis for a number of years in the late 1970s. When they are bypassed (whether because of their own default or because of factors beyond their control), the authorizing committees resent the fact that major legislative decisions are formulated in the appropriation process.

The widespread insertion of limiting provisos into appropriations has also contributed to the notion that the amount of legislation in these bills is increasing. Some limitations, such as the proviso concerning U.S. military involvement in Cambodia in the early 1970s and the anti-abortion limitation later in the decade, have been major statements of substantive policy. These cause celebres have colored perceptions about the amount of legislation in appropriation bills. There is evidence, however, of an increase in the number of limiting provisos. According to statistics compiled by the Democratic Study Group and the Congressional Research Service, the number of limiting amendments offered and agreed to by the House has substantially increased. 72/ An average of 15 such floor amendments were offered during the 1963-70 years; between 1970 and 1982, the annual average was 39. During the years before

71/ Fisher, Annual Authorizations: Durable Roadblocks, noted that fiscal 1982 authorizations for various agencies, including the Justice Department, the National Science Foundation, and the Environmental Protection Agency, were not enacted into law.

72/ For limitation amendments offered and approved between 1963 and 1977, see Democratic Study Group, The Appropriations Rider Controversy, Special Report No. 95-12 (February 14, 1978); for limitations amendments during the 1979-83 fiscal years, see Richard S. Beth, Daniel P. Strickland, and Stanley Bach, Limitation and Other House Amendments to General Appropriation Bills: Fiscal Years 1979-1983, Congressional Research Service, Dec. 28, 1982.

1970, only 28 percent of the limiting amendments were approved by the House; more than half of these amendments were agreed to during the next dozen years. The number of "General Provisions" enacted into law has steadily climbed during the postwar era. Approximately 115 such provisions were incorporated into the regular appropriation bills for the 1953 fiscal year; the fiscal 1965 appropriations had 160 general provisions; there were almost 200 provisions in the regular appropriations for fiscal 1970; the regular bills for fiscal 1980 had almost 250 general provisions. The number of general provisions in the defense appropriations bill doubled from 38 in fiscal 1956 to 70 in the 1980 fiscal year. There also has been an increase in the number of provisos attached to particular appropriation accounts, though there have been decreases in some appropriation bills. Once a provision is placed in an appropriation, it often is retained year after year without change. One of the oldest is a proviso, first inserted in a fiscal 1947 appropriation, that bars the National Labor Relations Board from using funds to organize agricultural workers.

The incorporation of legislation into appropriations has been spurred in recent years by the use of continuing resolutions to finance Federal agencies that have not received a regular appropriation. Under the precedents of the House, a continuing resolution is not a general appropriation bill; hence, the bar against legislation in appropriations does not apply to it. Moreover, since the continuing resolution is approved "at the last minute," it has become an inviting vehicle for provisions which otherwise might not make it into law. Until a few years ago, the continuing resolution was a brief statute that established the spending rate for appropriations covered by it and made some technical adjustments in law. Recent continuing resolutions, however, have ballooned in size, partly because of the legislation enacted in them. The first continuing resolution for the 1983 fiscal year (P.L. 97-276)

sprawled over 20 pages in the statutes. Its numerous legislative provisions included: restrictions on the procurement of imported goods by the Defense Department; rules for the disposal of Federal lands and for exploration in wilderness areas; restrictions on legal assistance to aliens; provisions for the collection of debts from Federal employees; payments to State governments for community service grants, urban mass transit, and other Federal programs; and rules for the importation of steel products.

Continuing resolutions are the most notable instances in which legislation is placed in appropriation bills, but just about every appropriation has some legislation or limitations.

SPENDING IN AUTHORIZING LEGISLATION

Congress has been making spending decisions in legislation since its first session. Until the 1920s, it did so in special appropriations which often were combined with legislation into a single measure; afterwards, it enacted backdoor spending that bypassed the appropriation process. New backdoor legislation has been curtailed by the Budget Act, but entitlements remain a serious budgetary problem for Congress. Their cost has continued to rise because benefits are indexed, the number of eligible recipients increases, or because of congressional action.

While appropriations are not supposed to be made in legislation, authorizing legislation can influence the level of appropriations. Annual authorizations usually exert a strong influence; multi-year authorizations tend to have less effect. The strongest influence occurs when Congress decides not to establish an agency or program, thereby precluding an appropriation for it. Congress can, in legislation, set the terms and conditions under which an

appropriation is to be spent, prohibit the use of appropriated funds for particular purposes, and spell out the manner in which the appropriation is to be administered. The Comptroller General has repeatedly held that "appropriations to carry out enabling or authorizing laws must be expended in strict accord with the original authorization both as to the amount of funds to be expended and the nature of the work authorized." 73/ An appropriation can expressly override the terms set in legislation (because it, too, is a law) but cannot do so implicitly. 74/

In recent years, some authorizing legislation has dictated how appropriated funds are to be used. Inasmuch as the appropriation is made through the regular process, this arrangement is not backdoor spending, but neither is it a conventional authorization. Various methods used to "force" appropriations are discussed below.

Mandating the Availability of Funds

Conventional authorizations are permissive. Even when definite amounts are authorized, Congress can appropriate a lower amount. But when the authorizing legislation stipulates that a certain amount "shall be available" for a particular activity, the affected agency must spend the designated amount unless the appropriation expressly provides otherwise. Since most appropriations are lump sums, they usually do not specify amounts for individual activities. When this occurs, the authorizing legislation determines the amount available for the designated purpose. The "shall be

73/ U.S. General Accounting Office, Principles of Federal Appropriations Law. Washington, U.S. Government Printing Office, 1982. p. 2-38.

74/ Ibid.

available" language has been inserted into authorizing legislation for the Immigration and Naturalization Service, the Nuclear Regulatory Commission, and the International Communications Agency. 75/ The Appropriations Committees have successfully fought to delete "shall be available" provisions from various authorization bills. In 1980, for example, Senator Hollings won adoption of a floor amendment changing "shall be available" language in authorizations for the Board for International Broadcasting and the International Communications Agency to authorizations "not to exceed" the specified amounts. 76/

The "shall be available" approach sometimes provides that "not less than" a certain amount shall be available for a particular activity. The effect is to establish minimum levels of spending in authorizing legislation. A 1981 law stipulated that the amount available for foreign offices of the U.S. Travel and Tourism Administration shall not be less than the amount obligated in fiscal 1980. 77/

Reprogramming in Authorizing Legislation

Authorizations normally precede appropriations, but the reverse also occurs frequently. When a program has an annual (or an expiring) authorization, the reauthorization for the next fiscal year(s) will usually be enacted while the appropriation for the current fiscal year still is in effect. This sequence provides an opportunity for the authorizing legislation to shift previously

75/ Louis Fisher discusses "appropriation forcing" language in The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices, 29 Catholic University Law Review (1979). p. 65-67.

76/ 126 Cong. Record, daily ed., June 16, 1980. S 7051.

77/ P.L. 97-63.

appropriated funds from one use to another. An attempt to do this led to a brief conflict in 1982 between authorizing and appropriating committees. On August 11, 1982, the House gave final approval to a 2-year authorization for the State Department which reprogrammed \$400,000 of appropriated funds for reopening consulates in 7 cities. 78/ On the very same day, Senator Weicker offered an amendment to a fiscal 1982 supplemental appropriation bill providing that no appropriated funds could be used for the purpose specified in the State Department authorization "unless reprogrammed in accordance with the procedures established by the Committees on Appropriations of the House and Senate." 79/ The amendment was agreed to without objection from the Senate Foreign Relations Committee.

Proportional Appropriations

Many of the authorizations enacted in the post-war era were broad grants of power to Federal agencies. In the 1970s, however, some authorizations became more detailed and specific amounts were authorized for the agency's activities. Because appropriations were made in lump sum and usually were below the authorized level, some agencies were uncertain how to allocate the available funds among their activities. The agency could not spend the full amount authorized for each activity because this would have totaled more than the appropriation. It could follow the guidance provided in Appropriation Committee reports, but to do so would elevate report language above authorization statutes.

78/ 128 Cong. Record, daily ed., August 11, 1982. H 5627.

79/ Ibid., S 10240.

The National Science Foundation has been one of the agencies caught in this dilemma. The solution devised for it and subsequently applied to several other agencies has been endorsed by both the authorizing and appropriation committees. The NSF authorization specifies fixed amounts for each of more than 20 activities. The authorizing legislation provides that if the appropriation is less than the total authorized, the amount available for each activity shall be proportional to its share of the authorization. If an activity comprises 10 percent of the total authorized, it gets 10 percent of the appropriation. 80/ This formula is reinforced by a provision in the NSF appropriation

that to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally. 81/

Under this bilateral arrangement, the authorizing legislation decides what the appropriation means and the appropriation has the effect of amending the authorization statute. Although it entangles the two types of congressional action, this arrangement preserves the basic purpose of each. It allows the authorization to set program priorities and the appropriation to establish spending levels.

80/ See, for example, sec. 13 of the National Science Foundation Authorization for fiscal year 1981, P.L. 96-516, 94 Stat. 3009. For an explanation of the proportionality clause, see H. Rept. 96-949, May 13, 1980. p. 75-77.

81/ See the fiscal 1982 appropriation for the Department of Housing and Urban Development and Sundry Independent Agencies, P.L. 97-101, 95 Stat. 1428.

Triggers in Authorizing Legislation

The proportionality rule enables authorizing committees to determine relative priorities; it does so by setting each activity's percentage share of the total appropriation. But it does not determine absolute priorities; the smaller the appropriation, the less that is available for the committees' priorities. To deal with this problem, some authorizations have thresholds which preclude funds for a designated program unless the appropriation for another program reaches a specified level. The objective is not to lower the appropriation for the "triggered" program but to pressure Congress to provide more funds for the "threshold" program. This tactic can be used when the authorizing and appropriating committees have different priorities or when a program favored by authorizing committees has weak political support and its financial prospects can be strengthened by tying its fate to a stronger one. For example, the Middle Income Student Assistance Act of 1978 barred any spending on Basic Educational Opportunity Grants if appropriations were below \$370 million for supplemental grants, \$500 million for work-study programs, and \$286 million for direct student loans. 82/

The effect of authorizing legislation on appropriations ranges from weak influence to strong control. As authorizing committees become more involved in financial issues, they are likely to seek more influence over appropriations outcomes. We can expect these committees to devise additional mechanisms and to expand the use of those discussed in this section. The extent to which they succeed will depend, in part, on the attitude of the Appropriations Committees.

82/ P.L. 95-566, 92 Stat. 2402.

THE BUDGETARY CONGRESS

The use of authorizations, appropriations, and budget processes to make expenditure decisions and conflict over the proper scope of these processes have compelled Congress to devote much of its work to budgetary matters. To an extraordinary degree, the business of Congress has become budgetary business. Tables 2 and 3 (p. 67-68) show that, between 1955 and 1982, there has been a sizable increase in the number of Senate and House roll calls dealing with budgetary issues. The classification of these votes was drawn from data published in Congressional Quarterly Almanac which excludes some procedural roll calls (such as quorum calls) from its count. Budget-related votes include all votes on appropriations bills, tax legislation (but not tariffs or tax treaties), budget resolutions, and reconciliation bills. Accordingly, procedural votes and roll calls on non-budgetary matters (such as limitations in appropriations bills) were included in the count for these measures. In the case of authorizations, roll calls affecting the level of expenditure (including votes on amendments and passage of the legislation) were deemed to be budget-related. It is hard to precisely define what is or is not budget-related, but an effort was made to apply uniform criteria for all of the years covered in Tables 2 and 3.

The number of budget-related votes has escalated in both Houses during the past quarter of a century. With the exception of the latest year (1982), the Senate's trend has been uninterruptedly upward. There were more than twice as many-budget-related roll calls in 1960 than in 1955, more than three times as many in 1965, almost five times as many in 1970, almost seven times as many in 1975, and almost eight times as many in 1980. In the House, the number of such roll call votes increased steadily until 1975 but declined subsequently.

It should be noted that the percentage of budget-related votes has been more stable in the House than in the Senate. During the period under review, budget-related votes fluctuated between 45 and 55 percent of all roll calls in the House, compared to a range of 41 to 71 percent in the Senate.

Procedural differences between the two chambers largely account for the different trends in the House and Senate. When budgeting is on the mind of the Senate, there is likely to be an immediate upsurge in the number (and percentage) of roll calls devoted to this subject. In the House, however, the rules and procedures under which legislation is considered often determine the extent to which budgetary interests are vented in floor votes. Members might be interested in detailed consideration of a budget measure but be barred from doing so by the special rule under which it is brought to the floor. A closed rule, for example, can limit the House to a single vote on a budget resolution or tax bill regardless of the amendments that Members might want to propose. No such impediment stands in the way of Senators who seek floor votes on budget issues. The roll call data for the 1981 session clearly show this difference between the two chambers. In that year, Congress approved an omnibus reconciliation bill that enacted more than \$100 billion in spending reductions and program changes requested by President Reagan. In line with the bill's extraordinary scope, the Senate took 63 roll calls on the reconciliation measure; the House, by contrast, conducted only 12 roll calls on the massive reconciliation bill which it considered under a special rule that limited voting to a handful of designated amendments.

It should be clear that the increase in budget business was not due solely to the advent of the congressional budget process. Both chambers began to give more attention to budget issues long before the budget process was installed. It was sensitivity to budget issues that prompted Congress to establish a budget

process; hence, the budget process itself was more an effect than a cause of congressional preoccupation with financial matters. If the budget came to dominate congressional activity, it was not simply because the routines of the process required so much attention, but also because financial issues became so compelling. The growth in the scope and expenditures of the Federal Government made budget policy more pervasive and salient; conflict over budget priorities and between the legislative and executive branches spurred budgetary activity in Congress. The persistent and growing deficits also channeled legislative attention to budget issues, and made resolving them more difficult; economic stagnation and turbulence complicated the budgetary work of Congress by taking away the easy option of lowering taxes and increasing expenditures. When budgetary conflict sprawled across the nation, it could not be bottled up in legislative committees.

Yet budgetary problems are not the only explanation of the increase in budgetary business. Fundamental changes in congressional behavior and operations also contributed to the rise in budget-related roll calls. During the past 25 years, the total number of roll calls, as well as the number of those unrelated to the budget, has soared in both the House and the Senate. Although the magnitudes differ, the trendline is remarkably similar in both chambers. The Senate had 7 times as many roll calls in 1975 as in 1955; the House had 8 times as many. There were comparable increases during this period in non-budget related votes. The Senate conducted 50 such roll calls in 1955 and 356 in 1975; the House had 39 roll calls unrelated to the budget in 1955 and 292 in 1975.

The budget was but one aspect of the turbulence and change that roiled Congress in the 1960s and 1970s. During these decades, House committee

leadership was dispersed, apprenticeship and specialization norms were eroded, and jurisdictional lines were blurred and contested. Rank-and-file Members exercised more independence from party leadership and institutionally Congress was more exposed to pressure from the outside. These changes led to more decisions being made on the floor. Members were less inhibited about taking issues to the floor after being rebuffed in committee; colleagues who were not on the committee of jurisdiction increasingly sponsored floor amendments on legislation outside their assigned areas of specialization. As the House and Senate became less disciplined, the floor became more active.

TABLE 2. Budget-Related Roll Call Votes in the Senate,
Five Year Intervals, 1955-1980, Annually 1980-1982

Measure	1955	1960	1965	1970	1975	1980	1981	1982
Authorizations	22	48	87	83	96	82	55	31
Appropriations	12	28	27	77	87	128	130	109
Tax Legislation	2	10	10	6	48	10	56	30
Budget Resolutions	--	--	--	--	8	50	26	35
Reconciliation Bills	--	--	--	--	--	4	63	18
Debt Ceilings	0	2	1	3	3	6	12	19
Miscellaneous	1	0	0	1	4	3	2	30
Total Budget-Related Roll Calls	37	88	125	170	246	283	344	272
Total Roll Calls	87	207	258	418	602	531	483	465
Percent Budget-Related	43	43	48	41	41	53	71	58

NOTE: See text for explanation as how the data were derived.

Source: Author's computations from roll call data in Congressional Quarterly Almanac.

TABLE 3. Budget-Related Roll Call Votes in the House,
Five Year Intervals, 1955-1980, Annually 1980-1982

Measure	1955	1960	1965	1970	1975	1980	1981	1982
Authorizations	27	28	78	77	147	105	70	71
Appropriations	6	16	21	39	94	111	85	79
Tax Legislation	3	3	3	1	48	14	7	3
Budget Resolutions	--	--	--	--	12	30	13	36
Reconciliation Bills	--	--	--	--	--	6	12	18
Debt Ceilings	1	2	2	2	11	7	2	0
Miscellaneous	0	1	0	2	8	4	7	8
Total Budget-Related Roll Calls	37	50	104	121	320	277	196	215
Total Roll Calls	76	93	201	266	612	604	353	459
Percent of Total that Were Budget-Related	49	54	52	45	52	46	55	47

NOTE: See text for explanation as to how the data were derived.

Source: Author's computations from roll call data in Congressional Quarterly Almanac.

A comparison of tables 2 and 3 suggests that this development came later to the House than to the Senate. The opening up of the Senate began during Lyndon Johnson's term as Majority Leader during the 1950s and continued in the following decade. This development spurred a nearly five-fold increase in Senate roll calls between 1955 and 1970. There was a more modest increase in House roll calls during this span. However, the House experienced a much steeper rise in roll call activity during the first half of the 1970s. A key development was the Legislative Reorganization Act of 1970 which provided for record votes in the Committee of the Whole where most amendments are voted on.

The vast increase in roll calls, mostly on floor amendments, was accompanied by another trend. As the number of roll calls increased, the number of public laws enacted by Congress declined. The 1955-56 (84th) Congress produced more than 1,000 public laws; the 1965-66 (89th) Congress produced 810 public laws; only 558 public laws were enacted in the 1975-76 (94th) Congress. The 97th Congress completed its work in December 1982 with fewer than 500 laws enacted. One reason for the decline in the number of new laws has been the enactment of broad legislation that encompasses a number of programs and in some cases spans several substantive areas. Broad legislation is more likely to be a vehicle for floor amendments than is legislation confined to a single subject. There are more roll calls but fewer laws because Members can achieve many of the same legislative objectives through floor amendments. This trend is reflected in significant changes in the ratio of recorded votes to public laws. ^{83/} The recorded votes/public laws ratio rose from .36 in the 1955-56 Congress to .91 in the 1965-66 sessions and to 4.38 in the 1975-76 Congress.

^{83/} This computation includes all recorded votes, not only the roll call data on which tables 2 and 3 are based.

In other words, there were approximately three times as many laws as recorded votes in the 1955-66 sessions and to 4.38 in the 1975-76 Congress. In other words, there were approximately three times as many laws as recorded votes in 1955-56 Congress, almost the same number of each a decade later, but more than four times as many votes as laws in 1975-76.

The trend data show a recent drop in the number of roll calls. There were fewer Senate roll calls in 1981 and 1982 than in any other session during the preceding decade. The House showed a similar dropoff for 1981 but a upturn for 1982, though the 459 total for that year was far below the peaks reached in the mid-1970s. While part of the decline may be due to a more orderly process on Capitol Hill, the drop-off also resulted from a sharp decline in law-making activity. With only 145 public laws enacted in the 1981 session, Members looked for vehicles onto which they could load bits and pieces of legislation. Their favorite vehicles were budget-related, principally the omnibus reconciliation bills and continuing resolutions.

This behavior had different impacts on the Senate and the House. In the first half of the 1970s, budget-related roll calls accounted for about 40 percent of total Senate votes. The percentage did not significantly increase in the first years of the congressional budget process because there were few recorded votes on budget resolutions. But in 1980, budget-related business accounted for more than half of the Senate's roll calls, and in 1981 more than 70 percent of the votes were related to the budget. There are a number of explanations for the 1981 situation. President Reagan's campaign to revise budget priorities, reduce taxes, curtail domestic programs, and increase defense spending impelled the Senate to focus repeatedly on budgetary matters. Each type of budget-related legislation afforded an arena in which budgetary

issues could be reopened. Decisions made in the budget resolution had to be implemented in tax and reconciliation bills. Spending cuts approved earlier in the year were considered. As economic conditions deteriorated and the deficit grew, the President placed additional budgetary demands upon Congress and some of the earlier decisions were debated again.

The House faced similar presidential demands and economic conditions, but its rules were structured so as to limit the number of roll call votes on budget measures. Hence, the budget resolutions, tax legislation, and reconciliation bills occasioned many fewer votes in the House than in the Senate. But the House, like its counterpart, devoted a great deal of attention to authorizations and appropriations, as reflected in the number of roll calls on these measures in 1981.

To understand how the budget became a more prominent part of congressional work, it would be useful to examine the trend in each type of budget measure. The most interesting finding is that, despite the establishment of the budget process, Congress still invests a great deal of attention in appropriations, authorizations, and tax legislation. With the exception of authorizing legislation, the congressional budget process has been additive. The notion that once budget resolutions have been adopted, little of interest or importance remains for the appropriations process is discredited by the roll call data in tables 2 and 3. It should be noted, however, that many of the votes did not pertain to the dollar amounts in regular appropriations bills; a substantial number of roll calls were on limitation amendments. Perhaps there were more roll call votes on appropriation bills because there was more legislation in appropriations.

The number of Senate roll calls on tax legislation fluctuates widely from year to year, but the trend has been upward. Major tax legislation has been considered in most years since 1975; because the Senate considers these measures under the equivalent of an "open rule," there have been many floor amendments. The number of tax-related roll calls also has increased with the growth of tax expenditures for particular programmatic purposes. ^{84/} With the exception of 1975, the House has consistently taken up tax legislation under a closed or modified rule; hence, there has not been a significant rise in the number of House roll calls.

During the first years of the congressional budget process, the House and Senate seldom voted on amendments to the budget resolutions. By the late 1970s, however, budget resolutions had become more like other congressional business that is subject to floor challenge. The recent adoption of a single budget resolution for the entire fiscal year (rather than the two provided for by the Budget Act) has contributed to a slight drop in roll calls, but a more important determinant is the extent to which the resolution generates conflict over budget policies and priorities. In some recent years, it has been hard to organize a majority in the House behind any resolution and, as a consequence, it has been necessary to take many votes in order to find or build that majority.

The reconciliation process has had a checkered history during the few years that it has been used. The House approved omnibus bills in 1980 and 1981, but it approached the reconciliation process through a number of separate measures in 1982. This tactic led to an increase in the number of roll calls. The Senate's 1980 reconciliation instructions were limited to a few programs; hence, the

^{84/} See Congressional Budget Office, Tax Expenditures: Budget Control Options and Five-Year Budget Projections 1983-1987 (November 1982).

reconciliation bill attracted only modest attention. As the scope of the process was broadened in 1981 to cover more programs, the number of roll call votes increased. The 1982 reconciliation was more limited in scope than in the previous year, and there was a corresponding drop in roll calls. The future of reconciliation is somewhat clouded, as is, therefore, the extent to which Congress will engage in this type of budget activity. The 1983 session adopted reconciliation instructions in the budget resolution, but did not follow through with a reconciliation bill. In any case, it is unlikely that reconciliation will soon regain the extraordinary scope and status it had in 1981.

During the postwar era, there was a steady increase in roll calls on authorizing bills due to (1) an enlargement in the Federal Government's domestic role, (2) an increase in annual and multi-year authorizations, and (3) a trend toward dollar rather than "such sums" authorizations. There was a decline in authorization votes in the late 1970s, however, as the calendar became congested with other business and as more unauthorized appropriations were enacted. There was a further decline in 1981 because many of that year's authorizations were included in the reconciliation bill rather than in separate authorizing legislation.

Congressional budget activity peaked in 1981. The vast amount of budget business led to a widespread concern that Congress had sacrificed its other legislative interests to the demands of the budget. "There's been a preoccupation on money matters that I had never thought possible," former House Minority Leader John Rhodes observed. Senator Russell Long complained: "Money, money, money, that's about all we've been talking about." 85/

85/ See article by Marjorie Hunter, "A One-Issue Session on 'Money, Money, Money'", The New York Times, Aug. 20, 1982.

Congress is a self-correcting institution. If it feels that excessive attention has been given to one area of public policy at the expense of other legislative interests, it is likely to make adjustments that provide for a more balanced workload. While the data in tables 2 and 3 do not go beyond 1982, there is reason to believe that the down-turn in budgetary business experienced in that year continued in 1983. Budgeting is still one of the most important issues facing Congress, but for now it no longer appears as pre-emptive as it was just a few years ago.

CONCLUSION

What should be done to remedy the imbalanced workload, triplication of effort, and boundary problems discussed in this report? One line of argument is that Congress should do nothing, either because things will take care of themselves or because the problems are beyond direct congressional control. According to the latter view, political and economic turbulence are the root cause of congressional dysfunction. When the economy is unstable and unpredictable, Congress is forced to make and remake the budget again and again. When the economy veers from its projected course, budgetary conflict within Congress and between the legislative and executive branches increases, as does in-fighting among the authorizations, appropriations, and budget processes. Discrepancies between expected and actual economic performance lead to inconsistent budgetary behavior within Congress as decisions made in one process are challenged in another. If budget problems are on the mind of America, they also will be on Congress' mind and will lead it to give extraordinary attention to this aspect of its work. However, if economic growth were to become more vigorous and stable, budgetary strife would diminish and Congress could turn to other matters.

Much the same argument pertains to the political turbulence which buffets Congress. In the 1965-75 decade, Congress made itself more accessible to outside political pressure by banning virtually all closed committee meetings, increasing the staffs of rank-and-file Members, diminishing seniority rights and the power of committee chairmen, and making recorded votes more common in the House. It became easier for outsiders to penetrate the budget's secrets and to influence its outcome. One by product of the easy access to Congress was that it became exposed to longstanding and pervasive inconsistencies about the role and size of Government. Americans wanted smaller Government but bigger programs, more benefits but lower taxes and a smaller deficit. 86/ A closed Congress can be partly walled off from these inconsistencies; an open Congress becomes an inconsistent Congress.

Even if improvements in political and economic conditions do not ensue, a respectable argument can be made that Congress is an institution given to cyclical swings. An excess in one direction may be followed by a correction in another; the fragmentation of legislative power leads to the consolidation of power which leads to a new dispersion. If Congress is overloaded by a multiplicity of budget-related processes or if the boundaries are inadequately defined, Congress can remedy the problem through small changes rather than "big bang" institutional overhaul. Evidence in support of this view comes from a slew of recent adjustments. A few annual authorizations (such as for the State Department) have been shifted to biennial status; Congress now makes do with only one budget resolution rather than with the two prescribed by the

86/ See Royce Crocker, Federal Government Spending and Public Opinion, Public Budgeting and Finance, Vol. 1 (Autumn 1981) p. 25-35.

1974 Act; the 1982 reconciliation bill was (with a few exceptions) limited to entitlements. At the start of the 98th Congress, the House revised its rules to make it more difficult to insert limitations into appropriation bills. If they want to, the House and Senate can adhere to germaneness rules more firmly. Members can discourage floor amendments by habitually voting to uphold committee recommendations; they can return continuing appropriations to their old status and end "Christmas tree" practices. They can do much of this without touching the rules.

Congress is an institution with multiple roles, a diversified membership, a fragmented structure, and a long history. It is not the most disciplined or consistent of institutions, nor can it be. In the current legislative environment, it is tempting to seek simpler procedures by merging or eliminating some of the existing processes. Yet each of its budget processes has its own niche and history; if one were terminated, there would be ripple effects throughout Capitol Hill--not all of which might have been intended. What might seem to simply be a matter of improved efficiency can redistribute power within Congress or between the legislative and executive branches.

Congress is an institution in which process and substance are intertwined. Can one be certain that the recent attention to budgetary matters is due to procedural complications rather than to economic and political conditions? If the economy were to recover and stabilize, deficits were to be reduced to acceptable levels, and political conflict were to abate, Congress might return to a less budget-oriented life. Yet, the changes made in response to short-term problems are likely to have long-term consequences.